

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

=====X
ROBERT FRANK AND BARBARA FRANK

Plaintiffs,

Vs.

File No.: ECF 10-3378 LMM

UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA

Defendants,

=====X

COMPLAINT

COMES NOW, the Plaintiffs, ROBERT FRANK and BARBARA FRANK by and through their attorney, Sanford Kutner, and for a Complaint against the Defendant, state and allege as follows:

NATURE OF CLAIM

1. This action is for declaratory and injunctive relief and for damages to redress the deprivation of rights secured to the plaintiff by 21 U.S.C. §343(a) et seq, misbranded and/or mislabeled food.

JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343 (4), conferring original jurisdiction upon this court of any civil action to recover damages or to secure equitable relief under any Act of Congress under the Declaratory Judgment Statute, 28 U.S.C. §2201 et seq.

PARTIES

3. The plaintiff, ROBERT FRANK, a male citizen of The Bronx, State of New York, was employed initially by the ORTHODOX JEWISH CONGREGATIONS OF AMERICA (“the OU”) to be a mashgiach at Montefiore Medical Center (“Montefiore”).
4. The plaintiff, BARBARA FRANK, a female citizen of The Bronx, State of New York, was employed by the OU as a mashgiach for certain kosher events which were distinct and separate from Montefiore Medical Center.
5. The defendant, UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA (“OU”) is responsible for kosher supervision, nationwide, which includes inspection and certification of Montefiore Medical Center to insure strict kosher guidelines are maintained, utilizing the symbol of the letter “U” encircled by the letter “O” which can be found on the label and signage of those food items that OU has certified as being Kosher to insure strict kosher guidelines are maintained.

ALLEGATIONS OF ROBERT FRANK

6. Robert Frank was employed as a mashgiach (kosher food supervisor) at Montefiore.
7. His duties were to inspect food deliveries to prevent non kosher food from entering Montefiore’s kitchen and cafeteria, then being cooked and served to hospital patients and cafeteria patrons.
8. His duties also included making periodic inspections through the food preparation areas to insure that all the kosher laws were being followed by the kitchen and cafeteria staff, since they received very little kosher food preparation training by Montefiore and/or the OU.
9. Robert Frank is exceptionally observant in the Jewish religion. , in orthodox rituals,

observances, and food.

10. The plaintiff strictly observes the Sabbath, lays tefilin every morning; prays three times a day, follows all orthodox rituals; observances, including fasting several days a year; maintains a strictly kosher home; eats only food that is strictly kosher when not at home; and lives the daily life of being an Orthodox Jew..
11. For several months there was one dishwashing machine to wash kosher products at Montefiore. Jewish law requires separation of dairy (“milchik”) and meat (“fleishik”) food and utensils; therefore one dishwasher is required to wash milchik and another is required to wash fleishik food utensils.
12. Even though notification was made by the plaintiff concerning the dishwasher situation to Frank’s supervisor, Rabbi Barry Kwiatkovsky, head mashgiach, who was approved and appointed by OU to Montefior, and Rabbi Dov Schreier, the OU rabbinic coordinator many times over a several month period resolution was not finalized for eleven months.
13. During this eleven month period, Jewish patients and family who kept Kosher as well as doctors and staff from Yeshiva Medical School were unknowingly subjected to consuming food that was not prepared in accordance with orthodox kosher dietary standards.
14. Frank was under orders by both the OU and Montefiore to violate his religious convictions (9th COMMANDMENT Exodus 20:16, "Thou salt not bear false witness against thy neighbor”) and lie to anyone who inquires of any kosher violations that Frank had witnessed, and then tell them that everything was 100% kosher even if he had personal knowledge that there were kosher violations.

15. On March 6, 2008 , Tzvi Hersh Weinreb, executive vice president of the OU and Eleizer Eldelman executive director of OU were formally notified of numerous kosher violations that existed at Montefiore, about which Frank had previously found fault and requested assistance of the OU to intervene with Montefiore and rectify the situation.
16. Frank had made numerous other attempts to report the kosher violations at Montefiore, first to Montefiore and then to OU, but to no avail.
17. The Montefiore hospital kitchen was not maintained at a 100% kosher level, because the OU was negligent in their kosher supervision of Montefiore hospital and allowed the kosher infractions to continue for a long period of time.
18. In the “Medical Staff House Staff Orientation Manual 2005” under FOOD AND NUTRITION SERVICES which listed Chris Trivlis as the Director of Food and Nutrition Services. The Manual went on to state, “At the Einstein division all meals are prepared in a kitchen under Rabbinical supervision in accordance with Kosher Jewish dietary laws.” OU was the certifying agency.
19. Only after Frank went to the media, including the New York Post, and exposed the kosher problems did OU conduct any sort of investigation into the kosher violations that Mr. Frank had witnessed and documented by both audio and video tape.
20. After Frank went to the media, OU claimed that they had an “independent investigator” to research the kosher conditions at Montefiore.
21. The alleged independent investigator was apparently on the OU staff at the time of the inspection.
22. Even though OU became aware of many kashruth (kosher) violations, a set of Jewish dietary laws in accordance with Jewish halakha.

23. The violations, included allowing Montefiore Medical Center kitchen employees to bring non kosher foods directly into the kitchen for their personal use, which created an environment in which the plaintiff was prevented from doing his job, i.e., which was to keep non kosher food out of the Montefiore Medical. kitchen,
24. No action was initiated by OU to rectify the bringing in of non kosher foods.
25. After Frank went to the OU with video documentation of kosher violations, OU required all mashgiachs at Montefiore to sign a letter of confidentiality which would have prohibited knowledge of kosher violations at Montefiore to be publicized and/or disseminated outside of Montefiore.
26. Frank did not sign the letter of confidentiality knowing from experience that OU would not fulfill their obligation and Frank would be silenced
27. On December 17, 2009, the plaintiff's employment was terminated by Montefiore after advising two internet blogs, which, in turn, informed the public of the poor kosher conditions that existed at Montefiore.
28. OU silenced Frank, the advocate for insuring that Jewish people who observe the rules of keeping Kosher.
29. OU allegedly has used "strong arm tactics" to force mashgiachs and/or Rabbis to certify products that are not Kosher for fear of losing their livelihood as what happened to Frank.
30. Frank felt that by going public that there would be a public outcry and that OU and Montefiore would have to take action to repair the poor kosher conditions at Montefiore hospital.

31. Frank put his religious convictions as an observant Jew well ahead of his own personal welfare, knowing that his medical benefits would be terminated for him and his wife. He would rather suffer financially than go against his religious beliefs.
32. Frank was formally reprimanded for not lying to an individual, two days prior to his suspension regarding the kosher condition of the cafeteria. Frank could not and would not violate the Ninth Commandment.
33. Because Frank refused to sign the aforementioned OU's letter of confidentiality, OU, in retaliation, would not support plaintiff's efforts to perform his duties as a mashgiach, which was punishment for refusing to sign the letter of confidentiality.
34. Even though OU was aware and possibly conspired, the OU refused to interfere with the harsh and hostile working conditions that were imposed upon Mr. Frank by his supervisor Rabbi Kwiatkovsky
35. OU has a large financial interest in not giving up their kosher certification of Montefiore hospital due to the loss of revenue for the kosher certification fees.
36. It appears that OU places financial remuneration ahead of religious doctrine.
37. OU did not want to be exposed regarding internal kosher violations at Montefiore since other establishments could have the same situation.
38. OU attempted to cover up the kosher violations that existed at Montefiore hospital by requiring all mashgiachs to sign confidentiality agreements to insure their continued silence in exchange for being allowed to work as a mashgiach within OU's system.
39. Preventing the kosher violations from becoming public knowledge would naturally cause the OU a great deal of bad publicity, especially if there were a cover-up concealing the violations of certified establishments actually not being strictly kosher.

40. Robert Frank attended a meeting with the OU on or about November 3, 2008.
41. At the meeting OU was represented by Rabbi Dov Schreier, the rabbinic coordinator in charge of kosher supervision at Montefiore; Rabbi Yaakov Luban, supervisor of Rabbi Schreier; and Rabbi Kwiatkovsky.
42. Rabbi Kwiatkovsky admitted to the OU representatives at that meeting that he allows Montefiore Medical Center employees to bring non kosher food into the kitchen for personal use.
43. After the meeting OU did not take any corrective actions to correct the aforementioned revelation.
44. OU did, in fact, continue to thwart Robert Frank's efforts to do his job as a mashgiach.

ALLEGATIONS OF BARBARA FRANK

45. Robert Frank's wife Barbara was employed by the OU on a casual basis for the past four years, working two or three days each month as a mashgiach.
46. BARBARA FRANK last worked for OU November 15, 2009 and as of March 5, 2010, has not been called to work.
47. On January 11, 2010, Barbara Frank called her supervisor at the OU, Rabbi Steinberg, to find out why she had not been called to work since her last day of employment with OU was November 15, 2009.
48. Steinberg answered, "You know why."
49. Barbara Frank asked Steinberg why the situation with her husband should stop her from getting work. "You're married to him," Steinberg replied.
50. Rabbi Steinberg confirmed the conversation in paragraphs 47, 48, and 49 that took place with Barbara Frank in an interview given to "Failed Messiah" blog on January 11, 2010,

in which Steinberg confirmed the above exchange took place, and confirmed that Barbara Frank is being denied work because of who she is married to.”

51. As of April 16, 2010, Barbara Frank has not been offered any position with OU, including, but not limited to mashgiach.
52. The actions of the OU make working conditions purposefully intolerable causing extreme emotional and financial distress upon the plaintiffs.
53. Knowing that exposing OU could be financially devastating, the plaintiffs would not take the risk of losing their jobs and benefits and, therefore, seeking assistance like food stamps unless their religious convictions were more significant than fabricating the continuing kosher certification.
54. Plaintiffs are now placed in a position where the defendants have insured that they cannot receive employment as mashgiachs even though they have diligently sought similar positions at kosher operations.
55. WHEREFORE, plaintiff requests that this Honorable Court enters a judgment in favor of the plaintiff and against the defendants and such other relief that the Court seems just and appropriate as follows:
 - a. Defendant’s actions were so egregious as to justify punitive damages.
 - b. By reason of the facts and circumstances stated in this verified complaint, plaintiff has been damaged by defendant and is demanding adequate reparation for such mental, physical, and financial damage.
 - c. WHEREFORE, plaintiff demands judgment against defendant in the amount of \$2,000,000.00 plus costs and disbursements together with any other relief the Court finds just and proper

- d. Insure that OU performs its duties as prescribed, regarding their obligation to insure people who keep kosher are actually receiving kosher foods; for example, during the eleven month period where there was only one dishwasher was operational which made all food certified as being kosher, was, indeed, a ploy to deceive
- e. Insure that their proper motivation of OU is their religious duties and obligations as opposed to OU's financial and political enrichment as well as those that they certify, such as Montefiore Medical Center.

Respectfully submitted,

April 16, 2010

s/Sanford Kutner

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